Conclusions of the summary report on the courts' jurisprudence in cases related to value-added tax (VAT) deductions

Dr. Péter Darák, President of the Curia of Hungary, set up a jurisprudence-analysing working group to examine the courts' jurisprudence in cases related to value-added tax (VAT) deductions.

The jurisprudence-analysing working group comprised first instance court and Curia judges, tax advisors, a university professor, a lawyer-tax advisor and a representative of the national tax authority. The jurisprudence analysis was warranted by the fact that VAT cases constitute a significant portion of finance-related litigations. Law-making and law-application in Hungary has been strongly influenced by Community legislation and by the case law of the Court of Justice of the European Union (ECJ). Upon Hungarian requests several preliminary rulings have been delivered in which important principles affecting the application of law by the courts have been laid down by the ECJ. The jurisprudence-analysing working group identified the most frequently arising legal problems and the courts' solutions to those problems, and examined whether the courts were in need of guidance and whether a uniformity decision was needed to be adopted in this field.

The working group analysed 279 cases (including 87 Curia cases) in the form of a questionnaire survey, from which conclusions were inferred on the tax authority proceedings as well as on the first instance and the review proceedings. By involving international organisations, the relevant practices of 10 EU member states were also examined. The survey revealed that in the involved member states similar problems arose and similar solutions were provided. In the Summary Report presenting the results of the jurisprudence-analysis the ECJ's relevant case law was also presented in detail. An overview of the Curia's 2012-2014 jurisprudence was given separately as well. The place of value-added tax in the tax regime and the civil law connections of VAT deduction-related cases were also analysed in the Summary Report.

The most important conclusions of the analysis can be summarised as follows:

- The most frequent facts based on which a taxpayer loses his case are the following: the economic transaction indicated in the invoice did not take place; the economic transaction took place not between the parties indicated in the invoice; artificial transaction chains were used for the purpose of tax evasion.

- From among the ECJ's judgments the following judgments were most frequently invoked by the parties: C 80/11, C 142/11 Mahagében/Dávid, C–439/04, C–440/04 Axel Kittel, C–324/11.

- In analysing the "objective circumstances" specified in the ECJ's case law, 36 such circumstances were identified, from which the following were the most typical: absence of further documents supporting the occurrence of the economic transaction; absence of the requisite personal and material resources (workers, machines) on the part of the invoice issuer; the invoice issuer did not have documents or did not file a tax return or failed to pay the VAT or did not have a certificate of performance or did not possess the goods or did not acknowledge the occurrence of the economic transaction.

- The most frequent failures and omissions on the part of the national tax authority were the following: failure to establish the facts or to prove that no real economic event took place or to reveal the objective circumstances.

- This type of lawsuit typically raises disputes related not to the interpretation of law but to the issue of the burden of proof and the evaluation of evidence. While maintaining taxable persons' duty to cooperate, the ECJ judgments impose the burden of proof primarily on the tax authority, and designate national courts to make the final evaluations. "Objective proofs" attesting to the actual taking place of an economic event are not enumerated exhaustively in the ECJ's judgments or in national law, and because of the diversity of such proofs no such exhaustive list can in fact be provided. The scope of such proofs can be clarified in the jurisprudence of the courts.

- In case an economic transaction did not take place, the criteria of "knew or could have known" need not be examined. In case an economic transaction did actually take place but in the tax authority's view it took place not between the parties, most courts were of the opinion that the criteria of "knew or could have known" were not to be examined. The jurisprudence-analysing working group, however, is of the opinion that in the light of the relevant ECJ decisions, an examination of the circumstance of "knew or could have known" may, depending on the facts of the case, be justified.